

1 Painting and eventually cancel his license. You will go
2 through the entire roster of co-channel licenses determining
3 their status, and you will try either to get them cancel
4 dead licenses or join your service ultimately to get the
5 maximum degree of business you can on your repeater with a
6 minimum degree of sharing.

7 The ultimate success is where you have gotten
8 every other licensee to either cancel or go away or join
9 your service so that you're the last one left. That would
10 be a layman's version of channel clearing, make deals with
11 people to promote your service.

12 Q Okay. And would it be correct that in the
13 late-1980's and early 1990's you have engaged in
14 channel-clearing efforts?

15 A Myself and any other commercial radio technician
16 in Los Angeles and most every city in the country is doing
17 it, absolutely.

18 Q Okay. And would it be correct that in many cases
19 you would offer licensees free or discounted equipment or
20 free or discounted repeater service or other such incentives
21 in order to induce the licensees either to assign their
22 licenses to you or to cancel their licenses?

23 MR. SHAINIS: Objection on relevancy.

24 JUDGE CHACHKIN: Overruled.

25 THE WITNESS: I'd make whatever deal I could to

1 get the licensee to come on board. If they wanted money,
2 I'd give them money. If they wanted new radios, I'd give
3 them new radios. If they wanted cellular phones, I'd give
4 them new cell phones. If they would sign up with service at
5 a discounted rate on a contract, that was fine with me, too.
6 I'd cut whatever deal I could make with the licensee.

7 Q Now, Mr. Kay, when you are sharing the use of a
8 frequency, is it correct that the various licensees have a
9 duty to avoid interference and to work with the other
10 licensees in order to ensure that the users monitor and take
11 reasonable steps to prevent interference?

12 A If they are within the same service area, which
13 generally defined is 70 miles, and they are licensed as
14 being co-channel with each other, they have a duty to try to
15 cooperate with each other to try to avoid interference
16 because any interference that occurs between users of two
17 repeaters, if my plumber gets into it with Nextel's
18 electricians and they proceed to jam the day lights out of
19 each other, nobody is going to use the channel. And they
20 will do that to each other.

21 Q Would it be correct, Mr. Kay, that if you have
22 exclusive use of a frequency, that your users would not have
23 a problem with users of other licenses, that there may be
24 issues that your users would have to work out with other
25 users, that there is not a problem dealing with users of

1 other licenses?

2 MR. SHAINIS: Objection. The question as
3 stated --

4 JUDGE CHACHKIN: Sustained. I think the witness
5 has testified about the advantages of exclusivity. Where
6 are we going with this? Let's move on to some questions
7 dealing with -- we've had an introduction to the subject.
8 Now let's get --

9 MR. SCHAUBLE: Okay. Your Honor, I think there is
10 one more detail that deal with the questions --

11 JUDGE CHACHKIN: Go ahead with your detail.

12 MR. SCHAUBLE: Okay.

13 BY MR. SCHAUBLE:

14 Q Now, Mr. Kay, is it correct that prior to June
15 1992 that end users were required to have their own FCC
16 licenses in order to operate their mobile units their mobile
17 units?

18 JUDGE CHACHKIN: I think you have your date wrong.
19 I believe the effective date of that docket was October of
20 1992, and it referred only to SMRS end users. That isn't to
21 say that -- customers users may not have community repeater
22 licenses, which are still available, if you can find a
23 channel. I think you're referring to one very specific type
24 class license, and your date is wrong. Is that what you're
25 after?

1 BY MR. SCHAUBLE:

2 Q Let me rephrase. In 1992, is it correct that the
3 Commission limited the requirement that SMR end users, with
4 very limited exceptions, the Commission eliminated the
5 requirement that SMR end users have their own licenses?
6 Correct?

7 A With the exception of control points that require
8 FAA clearance or within a designated receiving zone of the
9 Commission, an end user of an SMR does not have his own
10 license, and I believe the effective date of that, the last
11 date you could file for a regular SMR's user application,
12 was October of '92.

13 Q Okay. Now when an application was filed for a
14 land mobile station in which you were the applicant, Mr.
15 Kay, and I'm excluding any end user applications for the
16 purpose this question, is it correct that you would
17 generally prepare the application yourself?

18 A If I was the applicant, would I prepare the
19 application?

20 Q Yes.

21 A I can think of only one occasion where I did not.

22 Q Okay.

23 A There may have been others, but I recall one.

24 Q Approximately how many applications have you
25 prepared for land mobile stations for the licensee?

1 MR. SHAINIS: Objection. Relevancy.

2 JUDGE CHACHKIN: Is this relevant?

3 MR. SCHAUBLE: Your Honor, I've been getting into
4 the witness's familiarity with FCC applications and his role
5 in actually preparing these applications.

6 JUDGE CHACHKIN: All right. I'll overrule the
7 objection. Tell us approximately how many applications
8 you've prepared.

9 THE WITNESS: In my own name?

10 JUDGE CHACHKIN: In your own name.

11 MR. KELLER: Actually, we would like your name,
12 Buddy Corp., Oat Corp.

13 MR. SHAINIS: Your Honor, the question is so
14 overly broad, they don't have any span of time that they are
15 talking about, and they are asking for this gentleman to say
16 it off the top of his head.

17 JUDGE CHACHKIN: Answer as to approximately how
18 many you prepared since you've been operating these
19 stations. We are being very general. I don't expect --
20 sufficient or anything like that.

21 THE WITNESS: Taking my best estimate, which is
22 scarcely better than an educated guess, I would say
23 somewhere between 250 and 500 in my own name.

24 JUDGE CHACHKIN: Okay.

25 BY MR. SCHAUBLE:

1 Q Now, is it correct that when you apply for a
2 conventional land mobile station one of the items that you
3 specify is the number of mobile units you wish to have
4 authorized for that station?

5 MR. KELLER: Objection. This is where it is going
6 to be critical. When these questions are asked, we need to
7 know not only the time frame, but what radio service. "Land
8 mobile" is a very generic term.

9 JUDGE CHACHKIN: Sustained.

10 MR. SCHAUBLE: Okay.

11 BY MR. SCHAUBLE:

12 Q Let me ask you for the 470-to-512-megahertz band
13 in the business radio service.

14 JUDGE CHACHKIN: During what time period?

15 MR. SCHAUBLE: 1994 and prior. In this service
16 there shouldn't be --

17 MR. KELLER: In that service at the time --

18 MR. SCHAUBLE: All right. Okay.

19 BY MR. SCHAUBLE:

20 Q Is it correct that when you applied for a
21 conventional, land mobile station, the 470-to-512-megahertz
22 band, 1994 and prior, is it correct that one of the items
23 you had specified in the application is the number of mobile
24 units you wish to have authorized for that station?

25 A Yes.

1 Q Okay. For 1994 and prior, for conventional
2 800-megahertz stations, when you applied for those type of
3 stations, is it correct that one of the items you specified
4 would be the number of mobile units to be authorized for
5 that station?

6 A Sometimes yes; sometimes no. It varied on the
7 application.

8 Q Okay. Let me ask the question for the time period
9 -- the Commission, with limited exceptions, eliminated end
10 user licensing, October 1992 to 1994? Do you have that time
11 period in mind, Mr. Kay?

12 A Do you mean from October 1992 to 1994?

13 Q Correct.

14 A Okay.

15 Q Okay. For conventional 800-megahertz stations,
16 you filed an application for one of those stations. Is it
17 correct that one of the items you specify is the number of
18 mobile units to be authorized on that station?

19 A On behalf of business and SMR services, the answer
20 is, they would normally have the number of mobile units
21 requested filled in.

22 Q Okay. It would be correct that prior to the
23 elimination of end-user licensing for 800 megahertz, because
24 radio licenses, that if you filed an application for one of
25 those stations, you would specify the number of mobile units

1 to be authorized for that station?

2 A Yes.

3 Q Okay. Is it correct for 800-megahertz, SMR
4 stations prior to October of 1992 you would not specify the
5 number of units?

6 A It varied. On the supplemental form for the old
7 574 and the 574(a) if you were proposing mobiles to go in
8 operation simultaneously with the SMR, you would generally
9 specify those mobiles. There was a spot for that. It
10 depended how you configured the application, whether it was
11 an SMR by itself or whether or not the SMR license
12 application had accompanying SMRS user applications as part
13 of a package filing.

14 Q Okay. Now, when you filed an application that had
15 number of mobile units on the application, is it correct
16 that that number represented your estimate of the number of
17 mobiles that would be placed on the system within a
18 construction period within which you had to construct the
19 authorization after the application was granted?

20 MR. SHAINIS: Objection as to the form of the
21 question. It's compound, vague, overbroad.

22 JUDGE CHACHKIN: I'll overrule. I think the
23 witness is able to answer. Are you, Mr. Kay?

24 THE WITNESS: The number of mobile units you apply
25 for or I applied for are the number of mobile units that I

1 anticipated placing in operation within eight months after
2 the grant of the license, which would generally be anywhere
3 between two and four or five months after I filed the
4 application. So the anticipation could be anywhere between
5 10 to 12 to 14, 15, whatever number of months down the road
6 from actually doing the application, if that's what you
7 wanted to know. Using my crystal ball, probably a year or
8 more in the future.

9 BY MR. SCHAUBLE:

10 Q Okay. And what factors would you rely upon in
11 developing those estimates?

12 A My knowledge of the radio industry, my knowledge
13 of the business, anticipated sales, anticipated need for
14 additional frequencies to meet customer expansion and new
15 customers. It was very much crystal-ball prediction,
16 forecast.

17 Q Would you rely on any sort of records in
18 developing those estimates, or would that be based generally
19 on your knowledge?

20 A My general field of the business, communications
21 with other radio guys, feel of the market and -- radio sales
22 were doing, and conversion of other customers to our
23 systems, referrals coming in. Basically it was a business
24 estimate, is the way I would describe it.

25 Q Okay.

1 A Anticipating of needs in the future.

2 Q Now, isn't it correct that during this time period
3 that under the Commission's rules the mobiles that were
4 included in this estimate either had to be operating
5 immediately after the authorization was granted or there had
6 to be a purchase order in exchange for the mobiles, and the
7 mobiles had to be in use within eight months after the
8 authorization was granted?

9 MR. SHAINIS: Objection as to the form of the
10 question. Compound.

11 MR. KELLER: Also, again, this depends on service,
12 too, I think.

13 MR. SCHAUBLE: I don't think that this does.

14 JUDGE CHACHKIN: I'll sustain the objection,
15 unless, as you say, this applies to all services. Is that
16 your position, Mr. Keller? It doesn't apply to all
17 services, different services?

18 MR. KELLER: Well, I'm pretty sure there is a time
19 limit, too, because there were also some -- I don't have
20 them with me, but there were also some clarification of
21 public notices to be issued on this at some point in the
22 past, but I'll defer -- I'll certainly look at whatever rule
23 you are about to cite here.

24 MR. SCHAUBLE: It's 90.127(c).

25 THE WITNESS: Okay.

1 BY MR. SCHAUBLE:

2 Q Okay. And my question, Mr. Kay, is it correct
3 that Section 90.127(c) of the Commission's rules provided
4 that the mobile unit had to be operating immediately after
5 the authorization was issued, or there had to be a purchase
6 order for the mobiles, and the mobiles had to be in use
7 within eight months after the authorization was granted?

8 A Okay. I see what it says.

9 Q Okay.

10 A I read the Section D here.

11 Q I'm sorry, Mr. Kay?

12 A I said I read Section D here, too. "Failure on
13 the part of the applicant to provide all information
14 required by the application form or supply the necessary
15 exhibits or supplemental statements may constitute a defect
16 in the application."

17 All I can tell you, sir, I have no recollection of
18 ever putting a purchase order in or making a statement that
19 there would be immediately available, and I've never seen
20 the gets burg facility, the FCC ever require that of any
21 applicant. I have no recollection of them ever requiring
22 it, and I've never had an application bounce for failure to
23 make a statement like that. So, whatever.

24 MR. SCHAUBLE: Let me be clear. Your Honor, the
25 way the Bureau reads this rule is not that the underlying

1 purchase order had to be provided, but this is what they
2 estimated the application had to be based on.

3 THE WITNESS: Au contraire.

4 MR. KELLER: Your Honor, I'm having a little bit
5 of a problem. Is this a regulatory examination of Mr. Kay?
6 If they wanted to say what the rules provide, the rules
7 provide what they provide, and they can argue it. If they
8 want to ask what Mr. Kay did -- I guess to a limited extent,
9 I don't have a problem with them asking what he understands,
10 but --

11 THE WITNESS: There was a public release that I
12 found some time ago. I believe it was released in the early
13 eighties about SMRS user applicants no longer having to
14 provide copies of purchase orders or certifications that
15 they would be putting these radios immediately in service.
16 And, by and large, I think that particular news release,
17 public notice from the Commission, was effectively used
18 across all radio services because I've never seen anybody do
19 that. So there was time when they did require that in our
20 public release, and they changed the rules. I think we
21 might be able to find that, too, if we have it.

22 BY MR. SCHAUBLE:

23 Q Now, Mr. Kay, assuming that the authorization is
24 issued, it's granted, the eight months goes by, and it turns
25 out that you do not have the number of units you estimated

1 you would have, and assume, furthermore, that the number of
2 units you have is fewer than the number that is needed to
3 maintain exclusivity on that particular frequency in that
4 particular service, what was your understanding under the
5 Commission's rules as to your obligation to file an
6 application to reduce the --

7 MR. SHAINIS: Objection as to relevancy.

8 JUDGE CHACHKIN: How is it relevant?

9 MR. SCHAUBLE: Your Honor, what we have here is we
10 have a loading issue, and we think the evidence will show
11 here that in many instances Mr. Kay filed applications for
12 authorizations specifying a certain mobile count, and the
13 records provided show that he did not have the authorized
14 number of mobiles, and 90.135(a)(5), the rule we believe
15 provides that if the number he actually has is less than the
16 number required to provide exclusivity, that he had an
17 obligation to file application to reduce his mobile count.
18 I think this is extremely relevant to the loading issue.

19 MR. SHAINIS: Just assume for argument's sake,
20 though, that what Mr. Schauble is saying is correct, his
21 understanding of the rule, though, is irrelevant. Either he
22 did it or he didn't do it.

23 MR. KELLER: Well, I was going to say that if they
24 want to put in evidence that Mr. Kay did that, then they are
25 -- to do so, but I don't think they should be asking

1 hypothetical questions until they have established a
2 foundation. If they want to put in evidence of that and
3 then ask Mr. Kay about that evidence, that's fine, but to
4 ask hypotheticals based on evidence they think they are
5 going to show is improper. I understand you're not bound by
6 the Federal Rules of Evidence, but I think that's a
7 generally accepted principle.

8 MR. SCHAUBLE: Your Honor, as the situation of
9 what Mr. Kay's understanding here is at a minimum relevant
10 to what any particular section --

11 JUDGE CHACHKIN: Do you have any evidence that he
12 didn't follow the rules in this regard

13 MR. SCHAUBLE: Yes, Your Honor.

14 JUDGE CHACHKIN: So put in the evidence. Then
15 when he challenges that, then you can show him the rules,
16 and let's see if he is going to challenge them. I'll
17 sustain the objection this time.

18 BY MR. SCHAUBLE:

19 Q Mr. Kay, are you familiar with various trunking
20 formats?

21 A To varying degrees.

22 Q Okay.

23 Q And are you familiar with what's known as the "LTR
24 trunking format"?

25 A Yes.

1 Q Okay. As a matter of fact, you used the LTR
2 trunking format on various of your stations.

3 A Yes.

4 Q Is it correct that in some trunking systems when a
5 mobile unit is keyed up, a dedicated home channel is used to
6 communicate with the mobile and tell it which channel the
7 mobile should actually communicate on?

8 A Try that one again.

9 Q Okay. Is it correct that in some trunking systems
10 when the mobile unit is keyed up a dedicated home channel
11 can used to communicate with the mobile and tell it which
12 channel the mobile should communicate with?

13 A Home channel, that phraseology, "home channel," is
14 associated with the LTR technology, but your use of the word
15 a "dedicated home channel," if you're referring to a
16 dedicated data channel, then you would be talking Motorola
17 technology. You're mixing two technologies here. So which
18 one do you want to talk about?

19 Q Okay. The phrase "control channel" as opposed to
20 home channel.

21 A Control channel is used in Motorola in a Kokusai
22 format --

23 Q Okay.

24 A -- and, I believe, the new GE Edax.

25 Q Is it correct that the LTR format as used on your

1 stations does not use a dedicated control channel?

2 A It does not.

3 Q Okay. Is it correct that the LTR format as you
4 use it, the mobile unit monitors the repeater site output of
5 channels to determine if any one of the channels in the LTR
6 group is available?

7 A It looks at its home channel, and the data it
8 receives depends on what the system is doing.

9 Q Is it correct that the system would first monitor
10 the home channel?

11 A Are you referring to the mobile or the repeaters?

12 Q The mobile.

13 A The mobile sits on its openly channel. You just
14 turn it on; it sits and listens to its home channel.

15 Q Okay. And if the user is keyed up and the home
16 channel is busy --

17 A -- then it listens to what is called the
18 "free-repeater bit," which will be transmitted down from the
19 repeater on a subaudible data on the home channel, and
20 depending on what information is on that free-repeater bit,
21 the mobile will then decide what it wants to do.

22 MR. SCHAUBLE: Okay. Your Honor, I think it's
23 quarter-of-three. If the witness wishes to recess, this
24 would be a --

25 JUDGE CHACHKIN: All right. We'll take a

1 ten-minute recess. Let's go off the record.

2 (Whereupon, at 2:47 p.m., a brief recess was
3 taken.)

4 JUDGE CHACKIN: Let's go back on the record.

5 BY MR. SCHAUBLE:

6 Q Mr. Kay, will you please turn to WTB Exhibit
7 Number 19? Mr. Kay, do you recognize this as a further
8 answer to the Bureau's Interrogatory Number 4 that you
9 submitted in this proceeding?

10 A Yes.

11 Q Okay. On the second page, under "Declaration of
12 James A. Kay, Jr.," is that your signature?

13 A Yes.

14 Q Okay. Now, turning to the following pages, I'll
15 just take as an example page nine, is it correct that these
16 reports were generated from your computer system?

17 A In approximately November of 1995, yes, that's
18 correct.

19 Q Okay. And the loading report, the 461.9000;
20 that's a reference to the frequency question.

21 A Correct.

22 Q And then next to that, "11 Oat"; that's a
23 reference to the site the repeater is on. Correct?

24 A Oat Mountain, yes.

25 Q In that case "oat" refers to Oat Mountain.

1 Correct?

2 A Correct.

3 Q Okay. And in this case the "11" is sort of an
4 internal reference in your records to Oat Mountain.

5 Correct?

6 A One of them.

7 Q Okay. Would it be correct that under "name" would
8 be listed the various users on that particular station?

9 Correct?

10 A Those are users of the station.

11 Q And there is a category "Mobiles" is -- would this
12 be the number of mobile units that those particular users
13 have on that station?

14 A That we have in our records.

15 Q Okay. And this particular handwritten notation,
16 "WNQK 532"; is it correct that that is your handwriting?

17 A Yes.

18 Q Okay. And on these reports it's correct that you
19 went through these records and conducted any necessary
20 research and manually wrote the call signs on these reports.

21 A I matched up the frequency and the location with
22 the call sign or call signs appropriate to it.

23 Q Okay. Approximately how long did it take you to
24 undertake that process, Mr. Kay?

25 A Which process?

1 Q The process of reviewing the records and matching
2 them up to the call sign and writing the call sign on there?

3 A The better part of a day, I think, maybe two.

4 Q Okay. Is it correct that in your system that in
5 the normal practice of your business you do not keep records
6 by call sign?

7 A That's correct.

8 Q Okay. Turn to page one -- back to page one of the
9 exhibit, Mr. Kay. And under the paragraph labeled "Answer
10 to Interrogatory Number 4" do you see the sentence there:
11 "These reports are generated as of November 9, 1995 and
12 represent each customer's current repeater system
13 configuration"? Do you see that?

14 A Yes.

15 Q Okay. Do these reports, in fact, represent each
16 customer's current repeater system configuration as of
17 November 9, 1995?

18 A They represent the current or last, what was every
19 in our computer for our customer's configuration, what was
20 printed out.

21 Q Okay. In fact, these records reflect all
22 customers that were in the computer system, regardless of
23 whether the customers were actually operating in the system
24 in November of 1985.

25 A That's correct.

1 Q Okay.

2 A What you asked for.

3 Q And these records were generated from a series of
4 customer data bases in your computer containing information
5 on the customers. Correct?

6 A Yes.

7 Q And is it correct that on your system there is a
8 delete flag that can be used to certify that a customer is
9 no longer on the system but does not actually delete the
10 customer from the data base record.

11 A Correct.

12 Q Okay. Now, is it true when these reports were
13 prepared, the delete flag was disabled, resulting in all
14 customers on the system being printed on these reports?

15 A Yes.

16 Q Okay. If it's correct -- is it correct that if
17 you had wanted to print out reports just showing the current
18 configuration on the station, you would not disable that
19 delete flag?

20 A I think you're asking me a hypothetical there,
21 because that's not what you asked -- not what we did do.
22 You're asking the capability, which would be a hypothetical.
23 Is that correct?

24 Q No. Mr. Kay, there is a reference in here to each
25 customer's current repeater system configuration. How would

1 you actually go about providing a report with each
2 customer's current repeater system configuration? Would you
3 or would you not disable this delete drive?

4 JUDGE CHACHKIN: Where is the interrogatory
5 request?

6 THE WITNESS: Right above it.

7 JUDGE CHACHKIN: The specific --

8 THE WITNESS: Interrogatory Number 4, with respect
9 to --

10 JUDGE CHACHKIN: It doesn't say anything about
11 November 9, 1995 or any specific date. It says since
12 January 1, 1991.

13 MR. SCHAUBLE: Your Honor, it's in the answer
14 following. These reports are generated as of November 9,
15 1995 --

16 JUDGE CHACHKIN: Mr. Kay was answering the
17 question that you asked him, and your question that you
18 asked him didn't tell him any specific date. It told him
19 everything after January 1, 1991. Isn't that what you
20 asked?

21 MR. KELLER: He also just testified that this
22 report, the -- or last configuration. He clarified that
23 statement in his testimony just now.

24 MR. SCHAUBLE: Your Honor, I don't believe it was
25 clarified as of -- until the end of Mr. Kay's deposition.

1 JUDGE CHACHKIN: Well, you didn't ask him for as
2 of November 1995, did you? You asked him for all customers
3 since January 1, 1991. That's what the interrogatory is.

4 MR. KELLETT: Your Honor, we've got to go back
5 because this answer does not give a direct response to our
6 interrogatory request. It was given in response to Judge
7 Sibbel's order requiring him to produce an additional
8 supplemental response. So it's --

9 JUDGE CHACHKIN: Whose interrogatory request is
10 this?

11 MR. KELLETT: It was originally ours, then we had
12 a motion to compel, and we would have to look at Judge
13 Sibbel's order.

14 JUDGE CHACHKIN: What does Judge Sibbel's order
15 have to do with the answer?

16 MR. KELLETT: Judge Sibbel ordered him to provide
17 certain information.

18 MR. SHAINIS: Basically, there was a properly
19 filed objection to an interrogatory, and the motion to
20 compel was filed, and the interrogatory essentially
21 answered. So you have the answer to the interrogatory. I
22 don't know what Judge Sibbel's order has to do with
23 anything.

24 JUDGE CHACHKIN: It must be supplementary
25 information. It has nothing to do with this interrogatory.

1 All right. Let's go on.

2 MR. SCHAUBLE: Okay.

3 JUDGE CHACHKIN: That's all you provided, the
4 Interrogatory Number 4 and the answer. If you want to rely
5 on that, it's not here, so I don't have it before me as an
6 exhibit.

7 MR. SCHAUBLE: Your Honor, at this time I'd like
8 to bring up a matter that was discussed at the admissions
9 session, and that relates to Exhibits 280 to 285, which will
10 be called the Cordaro --

11 JUDGE CHACHKIN: What about it?

12 MR. SCHAUBLE: Your Honor ordered us to conduct a
13 review of those records in comparison to customer printout
14 screens, Mr. Kay.

15 THE WITNESS: Right.

16 MR. SCHAUBLE: And the Bureau has gone through
17 records, and we noted about 20 discrepancies between the
18 customer printout screens and the information that was
19 contained in the Cordaro data base.

20 MR. KELLETT: I think it's fair to note that not
21 all of them were -- they went both ways. Some increased the
22 loading count, and some decreased the loading count. It
23 wasn't like the customer printout screens were somehow
24 something Mr. Kay made more favorable than the Cordaro
25 records.

1 MR. KELLER: And I think -- obviously this isn't
2 testimony, but I believe the customer printout screens and
3 the Cordaro disk were slightly different time frames, by a
4 week or two or a couple of weeks or a month or something.

5 MR. KELLETT: You may have to explain some of
6 them.

7 JUDGE CHACHKIN: What do you want to do about it?

8 MR. SCHAUBLE: Your Honor, what we would like to
9 do is -- Mr. Kay's counsel expressed a preference for
10 relying on the customer printout screens, and what we would
11 like to do, Your Honor, is move the customer printout
12 screens into evidence as an exhibit, ask certain questions
13 about what discrepancies we did find, and I think at that
14 point it would not be necessary to move the Cordaro data
15 bases in, at least for the truth of the matter asserted.

16 MR. KELLER: Your Honor, if they want to move the
17 customer screens into evidence, we obviously have no
18 objection to that. That's what we want. Beyond that, if
19 they want to rely on the Cordaro data solely for the purpose
20 of questioning someone regarding alleged discrepancies, I
21 suppose I would have no objection to that. Our objection to
22 introduction of the Cordaro data still stands, however.

23 JUDGE CHACHKIN: All right. Well, there is no
24 objection to putting in the customer screens, so let's go
25 ahead.

1 MR. SCHAUBLE: Your Honor, I would like to provide
2 you with a copy. I have already provide a copy to counsel
3 for Mr. Kay.

4 MR. SHAINIS: Yes, he did.

5 MR. KELLETT: Are these numbered?

6 MR. SCHAUBLE: They are Bates-stamp order as
7 they --

8 MR. KELLETT: I was going to ask if we could refer
9 to the Bates stamp so we all know -- these are the original
10 discovery Bates-stamp numbers. Correct?

11 MR. SCHAUBLE: Correct.

12 MR. KELLETT: So yours starts at 3226.

13 MR. SCHAUBLE: 3226 to 4009.

14 MR. KELLER: And it runs sequentially to 4009.
15 Thank you.

16 MR. SCHAUBLE: We would like to have marked for
17 identification WTB Exhibit Number 347, a 783-page exhibit
18 consisting of --

19 JUDGE CHACHKIN: 347? What happened to 346?

20 MR. SCHAUBLE: Your Honor, we exchanged Mr.
21 Girard's written exhibit as 346.

22 JUDGE CHACHKIN: Oh, all right. Okay. This is
23 347.

24 MR. KELLER: How many pages is this?

25 MR. SCHAUBLE: 783, by my count.

1 JUDGE CHACHKIN: And this is what?

2 MR. SCHAUBLE: I'm going to refer to this as
3 "customer print screens" --

4 JUDGE CHACHKIN: All right.

5 MR. SCHAUBLE: -- "produced by Mr. Kay in
6 discovery."

7 JUDGE CHACHKIN: Okay. The document described
8 will be marked for identification as Bureau Exhibit 347.

9 (The document referred to was
10 marked for identification as
11 WTB Exhibit 347.)

12 MR. SCHAUBLE: Mr. Kay, you have before you what
13 has been marked for identification as WTB Exhibit Number
14 347.

15 THE WITNESS: Okay.

16 BY MR. SCHAUBLE:

17 Q Do you recognize these records?

18 A These are printouts of our customer screen from my
19 computer data base done in -- I think it was in March, maybe
20 April, of 1995. Actually, they are dated March 19, 1995; so
21 we have a date, March 19th.

22 Q Okay. And turning to the record, do you see on
23 the second line -- the first line has company and then
24 "customer file maintenance." Do you see that?

25 A Well, it says "3/19/95, Company Zero, Customer

1 File," then "CUSTSRN."

2 Q Okay. And on the line below that, on the left-
3 hand side, would that be the customer name?

4 A "A&G Auto Parts," yes.

5 Q Okay. And then below that would be the contact
6 person for the customer, and then the customer address.

7 A Yep.

8 Q And do you see along the right-hand side of the
9 page there is a series of numbers, for instance, "10,
10 Lukens; 11, Oat; 12, Castro; 13 Loop." Do you see that?

11 A Yes.

12 Q Would that be a reference to various repeater
13 sites?

14 A Yes.

15 Q Mr. Kay, as of March 1995, was this an exhaustive
16 list of your repeater sites where you were operating your
17 repeaters from?

18 A Well, 25 is miscellaneous, which could include
19 numerous; so, no, I don't think it's complete; but I don't
20 know for certain city here. I don't think it is. I think
21 miscellaneous included a number of sites.

22 MR. SCHAUBLE: Okay. Your Honor, at this time we
23 move WTB Exhibit Number 347 into evidence.

24 JUDGE CHACHKIN: Any objection?

25 MR. KELLER: No objection.

1 JUDGE CHACHKIN: Your Exhibit 347 is received.

2 (The document previously
3 marked for identification as
4 WTB Exhibit 347 was received
5 in evidence.)

6 BY MR. SCHAUBLE:

7 Q Mr. Kay, continuing to read these, do you see
8 there is a reference to site, and then below that Number 1,
9 Number 2, Number 3, Number 4, et cetera?

10 A Yes.

11 Q Would that be a reference to various sites that
12 the customer in question would be -- repeaters, the sites of
13 various repeaters that customers would be operating on?

14 A The system as it was updated to 95 could handle up
15 to 10 sites. So 10 separate systems or channels that the
16 customer would have could be entered in the data base.

17 Q So the answer to that question would be yes, Mr.
18 Kay?

19 A I think that's what I just said. I think it would
20 have up to 10. When you put up to 10 lines of information
21 about the customer's system in the data base at that time.

22 Q Now, do you see next to there there is a reference
23 to code?

24 A Yes.

25 Q And you see below there there's two numbers, a

1 dash followed by an additional two-digit number. Do you see
2 that?

3 A Yes.

4 Q Okay. What do those codes refer to?

5 A The 10 means it's a Mount Lukens system. The 49
6 was an arbitrary number placed upon that particular
7 frequency or repeater.

8 Q Okay. And next to that is "MMTH Bill." Would
9 that be a reference to monthly bill?

10 A How much we bill them per month. Correct.

11 Q Okay. And "MOB"; would that be a reference to
12 mobiles?

13 A Correct.

14 Q Okay. And then next to that there is a label for
15 "frequency." Would that be the frequency?

16 A Yes.

17 Q Now, for ABC Shopping Cart Service under Number 1
18 there is a listing for --

19 MR. KELLER: Where are you?

20 MR. SCHAUBLE: At Bates Stamp 3241, ABC Shopping
21 Cart Service.

22 THE WITNESS: Okay.

23 BY MR. SCHAUBLE:

24 Q Do you see under the code 1015 there are four
25 mobiles listed. Correct?

1 A Right.

2 Q Now, under the code, 1131, there are no mobiles
3 listed. There is no number listed under the "Mobiles"
4 column. Correct?

5 A Correct.

6 Q And in this situation was ABC Shopping Cart
7 Service, in fact, operating mobiles on the repeater
8 denominated as Code 11-31?

9 A I would say yes. I do not know from my personal
10 knowledge, but from the printout, I would say yes.

11 Q Okay.

12 A And it would be four mobiles, same as above.

13 Q Okay.

14 A And you have identified an idiosyncrasy in the
15 billing system that we have in the software package that if
16 we put four in both of those, it would -- elsewhere think
17 there were eight and would throw off the arithmetic.

18 Q Okay.

19 A You would have to ask Craig Sobel about it because
20 he designed it. I don't know if we ever got that -- fixed
21 or not. It's a custom-made program, and it has a number of
22 these little jewels in it. That's one of them.

23 Q Okay. Referring down to the bottom of the record
24 toward the center there is a reference to start date. Would
25 it be correct that that would be the date the customer

1 commenced service with your company?

2 A Yes.

3 Q Okay. And, similarly, end date would be the date
4 the customer ceased service with your --?

5 A Or that we effectively discontinued him or entered
6 at a later date as for stopping billing.

7 Q Okay. Would it be correct that ABC Shopping Cart
8 Service has been a customer from 11/1/93 until 2/28/94?

9 A Approximately. I doubt it's accurate to the day.

10 Q Okay. Mr. Kay, please direct your attention to
11 WTB Exhibit Number 20?

12 A Did you say 20 or 320?

13 MR. SCHAUBLE: Twenty.

14 THE WITNESS: Okay.

15 THE COURT: The witness has it.

16 BY MR. SCHAUBLE:

17 Q Mr. Kay, this is a printout from the Commission
18 data base, a record for Call Sign WIJ-754. Do you have that
19 before you?

20 A Yes.

21 Q Okay. Now there is a reference to File Number
22 R-276776, and then below that there is a reference to, which
23 I believe is a reference, which I believe is a reference to
24 the pending renewal application, and there is a reference,
25 File Number 9304414770. Do you see that?

1 A Yes.

2 Q Okay. And do you see that there is a grant date
3 listed for that application of 4/21/93?

4 A Okay.

5 Q Now, you see on the next line there is "Service
6 IB."

7 A Yes.

8 Q Are you familiar with that designation?

9 A That's Business Radio Service.

10 Q Okay. Now, turning to page three of the exhibit,
11 do you see there is a reference to -- locations on this
12 page?

13 A Yes.

14 Q And the first site listed the Mount Lukens.

15 A Yes.

16 Q And that's a site you have repeaters operating
17 from. Correct?

18 A Yes.

19 Q And the next site, Sunset Peak, is also a site you
20 have repeaters operating from.

21 A Yes.

22 Q Do you currently have repeaters operating from
23 Signal Hill?

24 A No.

25 Q Okay. You currently have repeaters operating from

1 Castro Peak. Correct?

2 A Yes.

3 Q And you also currently have repeaters operating
4 from Sierra Peak. Right?

5 A Yes.

6 Q Okay. Turn to the next page, Mr. Kay, and on the
7 line which begins "Frequency Key 1," --

8 A Okay.

9 Q Do you see there is a reference to Frequency
10 508.6875 megahertz?

11 A Yes, I do.

12 Q Okay. And do you see a reference to "Type Class
13 Station FB-6C"?

14 A Yes.

15 Q Are you familiar with that designation?

16 A Yes.

17 Q Would you please explain what that designation
18 means?

19 A "F" for fixed, "B" for base, "6," private carrier,
20 "C" interconnected to PSTN.

21 Q Okay. And would "PSTN" be a reference to public
22 switched telephone network?

23 A Right.

24 Q Okay. And would it be correct that this
25 authorization does not necessarily mean you would have to

1 interconnect to the telephone network but that you are
2 authorized to do so?

3 A That would be an interpretation which I would
4 agree with.

5 Q Okay. Please briefly describe your understanding
6 of what is meant by "private carrier operation."

7 A Private carrier is a UHF version of SMR. It
8 allows an individual or a company, a licensee, to provide
9 service to others on a commercial basis for profit. We are
10 much, as I say, intercarrier. We provide service to others
11 and make money doing it.

12 Q And turning down to the next line, Mr. Kay, under
13 -- "frequency 511.6875 megahertz" --

14 A Yes.

15 Q -- and under "Type Class Station" there is a
16 reference to "MO." Is that a reference to mobiles?

17 A Yes.

18 Q And next to that you see "number of units, 180."
19 Do you see that?

20 A Yes.

21 Q So this particular station, you were authorized
22 for 180 mobiles.

23 A That's correct.

24 Q Okay. Now, Mr. Kay, turn back to Exhibit 19.

25 Okay, Mr. Kay. Noting the fact that the reference to

1 frequency 508.6875 megahertz, turn between pages 135 and
2 136. Mr. Kay, please take as much time as you need.

3 A Which page numbers?

4 Q Between page 135 and 136.

5 MR. SCHAUBLE: I would note generally that in this
6 span these records are in ascending frequency order.

7 THE COURT: What do you want him to do?

8 MR. KELLETT: He is basically showing the
9 negative, Your Honor. He didn't report loading on this
10 station and we would point out that.

11 THE COURT: What pages do you want him to look at?

12 MR. KELLETT: Well, he's got an order to these.
13 It's ascending by frequency, and then it's ascending by site
14 number.

15 THE COURT: What pages do you want him to look at?

16 MR. SCHAUBLE: Between pages 135 and 136, and the
17 reason, Your Honor, --

18 THE COURT: 135 and 136.

19 MR. SCHAUBLE: -- is that frequency for this
20 508.6875 megahertz on page 135, there is a station on
21 station on 508.4375, and on 136 there is a station on
22 508.47125.

23 THE COURT: All right. What's your question?

24 BY MR. SCHAUBLE:

25 Q All right. Mr. Kay, my question is, when you

1 answered Interrogatory Number 4, November of 1995, isn't it
2 correct that you reported no loading on Station WIJ-754?

3 A I think you missed a page. I'll look for it right
4 now.

5 Q Please do, sir.

6 A Now I know you have the page. It's just my
7 finding it in here, because you showed it to me in the
8 deposition.

9 (Pause.)

10 THE WITNESS: Look at your page five. The call
11 sign you asked me to look for was WIJ-754. On page five the
12 third call sign down is erroneously listed as WIK-754, but
13 that's it. I don't know I have WIK-754's license. It's
14 WIJ-754.

15 MR. SCHAUBLE: Your Honor, why don't we go on to
16 the next exhibit?

17 THE COURT: Okay.

18 BY MR. SCHAUBLE:

19 Q Mr. Kay, if you would turn to the next book, and
20 this would be WT Exhibit 21. Actually, Mr. Kay, turn to
21 Exhibit 24. Do you have that before you, Mr. Kay?

22 A Yes.

23 Q And this is for Call Sign WIK-310.

24 A Okay.

25 Q And do you see an application granted on 2/4/92?

1 A Okay.

2 Q And turning to the third page, would it be correct
3 that the only site listed on this authorization is Sierra
4 Peak?

5 A That's what this shows. I'm not familiar with
6 these forms. I haven't seen these before.

7 Q And turning to the next page, do you see on the
8 first line there is a listing for FB-6?

9 A Yes.

10 Q And a frequency of 471.7375 megahertz?

11 A Okay.

12 Q And do you see that the number of mobiles
13 authorized here is 78 mobiles?

14 A Yes.

15 Q With respect to in your response to WTB Exhibit
16 19, in your response to Exhibit 19, did you provide any
17 loading, evidence of load for this station? Actually, Mr.
18 Kay, turn to page 3 of Exhibit 19, which is a loading
19 listing for 471.7375 megahertz at Sierra. Do you have that
20 before you?

21 A Yes.

22 Q And is it correct that the two call signs listed
23 there are WIK-611 and WIL-697?

24 A Yes.

25 Q Okay. And is it correct that a total of two

1 mobiles are listed on that page?

2 A On this page. That's correct.

3 Q Okay. And is it correct that you did not
4 attribute any of these mobiles under Call Sign WIK-310 when
5 you prepared the loading reports?

6 A If you're asking me what happened here, this
7 particular station, 471375 Sierra, is the WIK-611, WIK-611,
8 WIL-697, and would also be WIK-310.

9 Q Okay.

10 A If you're asking if there is an error here,
11 WIK-310 should have been listed on this page.

12 Q Okay.

13 A That must have been an oversight.

14 Q So it's correct that at the time you prepared
15 these reports you did not report any other loading for
16 WIK-310. Correct?

17 A It would appear that would have been on here. Of
18 course, you understand, this particular exhibit that you
19 have here that you're working from, 19, this is purely off
20 my billing records, and if you read what we answered here,
21 it plainly explains to you that this is incomplete. I think
22 it was pretty well explained in the front declaration here
23 that this is incomplete. If you want to go back and read
24 it, you're welcome to, but this information is incomplete,
25 but it's what I had. I gave you what I had, but it's

1 incomplete.

2 Q Okay. But is it correct that -- let me back up
3 for a moment. Is it correct that these reports reflect what
4 you were able to substantiate in terms of those usage based
5 on your response to the interrogatory?

6 A You asked for the records that I had, to provided
7 you what I could. I did. I down loaded everything that was
8 in my computer, and as explained here right on here, it
9 starts on page two here: No customer who discontinued
10 service prior to September 1993 is included. That's because
11 canceled customers were deleted prior to any inquiry from
12 the Commission in routine purging of our computer. Those
13 records no longer physically exist. They are gone. We
14 couldn't give them to you when you asked for them. They
15 didn't exist in January of '94. They were already long
16 purged off the date base.

17 So prior usage of other frequency, addition of
18 sites, deletion of sites, additions of frequencies,
19 deletions of frequencies, increases in mobiles, decreases in
20 mobiles, changes in frequencies from prior system
21 configurations, and for customers that are in here and not
22 even existing in here are customers whose records are
23 deleted. These records are incomplete. I gave you what I
24 had.

25 Q Okay.

1 A Also not included in here, also, Kay's records do
2 not reflect Kay's own shop use nor records of other uses in
3 other shops who used radios at no charge, and these radios
4 do not include rentals demos, and loaners because none of
5 those records, none of those usages resulted in customer
6 billing for repair service. These are my billing records
7 strictly for hard-paying repeater customers.

8 When I rented radios, I rented the radios, and I
9 give them the repeater service. Because I didn't charge for
10 the repeater service, no bill was ever generated, no account
11 ever opened, no record ever kept in my billing records here,
12 which is what you've got for those usages of repeaters. And
13 when I did the rentals, we did not as a rule keep track of
14 which repeater they operated on.

15 I was, therefore, unable to generate any
16 compilation here. I put those types of records in here
17 because where my rental units and my demo units and loaners
18 and usages by other shops for the same purposes, the records
19 did not exist of these uses, which we have proof did happen.
20 But I can't tell you where, what frequencies, or when,
21 beyond the dates of the rentals that they used my repeaters
22 for which they weren't charged.

23 This is why you have records here that show
24 certain usages, which was the hard-paying repeater customers
25 that do not show these other use acknowledges. You're

1 comparing incomplete records against complete licensing
2 records, and you're pointing out very correctly, they don't
3 match up. I agree, but that's why. You've got incomplete
4 records here that you are trying to match up against a
5 complete licensing record.

6 Q Okay. These records, Mr. Kay, reflect --

7 THE COURT: Which records?

8 MR. SCHAUBLE: Exhibit 19.

9 BY MR. SCHAUBLE:

10 Q These reflect every customer who was active from
11 September 1993 forward to November 1995 who was in your data
12 base. Correct?

13 A Correct. That was hard paying me for the
14 repeaters. Right.

15 Q And is it correct that during this time period you
16 had no other -- from which you could determine that other --
17 that you had other customers or rentals or other radios
18 operating on this frequency from this mountain top?

19 A We have no other records from which we could
20 compile to put in here to show that to you. I have lists of
21 hundreds of radios that I ordered in my shop. I have walls
22 and racks filled with them. You, too, yourself saw them. I
23 showed them to you. You -- all them. You know I have them.
24 I have other radio shops that do the same thing. They
25 operate on my repeaters. They are not charged. It doesn't

1 create a billing record here. I have rental units that have
2 gone out. We have stacks of rental invoices. They don't
3 reflect the frequencies, but they show the usage of radios,
4 and those radios are tuned to my channels.

5 I do not know what more I could show you. I don't
6 have a record of it. We explained that to you. Nor was I
7 required to make a record of it, and even if I did make a
8 record of it, I wasn't required to keep it for more than a
9 year. I gave you what I had, guys, is what I tried to
10 explain to you.

11 Q Okay. Mr. Kay, other than this page here and any
12 customer print screens you may have provided us in Exhibit
13 34 and any customer billing records you have for three
14 customers listed on this page, the customer files for these
15 three customers on this page --

16 THE COURT: Which page are you talking about?

17 MR. SCHAUBLE: Page 38.

18 THE COURT: Of what exhibit now?

19 MR. SCHAUBLE: Exhibit 19, Your Honor.

20 THE COURT: All right.

21 THE WITNESS: Now, I should explain also --

22 MR. SCHAUBLE: I didn't finish the question.

23 THE WITNESS: Well, I want to clarify because
24 you're talking about something here regarding the usage on
25 that particular channel. I had multiple call signs on an

1 awful lot of the UHF channels. I had customers, for
2 example, that were primary on Mount Lukens and would reflect
3 on the Mount Lukens side of things on that billed sign.

4 The customer oftentimes had the capability of
5 using a Sierra Peak repeater but wasn't charged for it. If
6 he wasn't charged for it, he doesn't show up in these
7 printouts, but the radios existed, they were in the
8 possession of the commerce, they weren't billed for it; and,
9 hence, because they weren't billed for it, they don't show
10 up in that report. And because they weren't billed for it
11 there is also not much of a record of it either.

12 The technicians such as myself, if we had a
13 failure on one relay site such as Mount Lukens, we would
14 switch a customer over to Sierra Peak, remotely upon the
15 failure and then switch them back. The customer's units
16 would operate within the area footprint of Sierra Peak and
17 would be counted against that call sign, but it doesn't
18 reflect in our billing records. That's the only records I
19 could give you. What's wade.

20 BY MR. SCHAUBLE:

21 Q Okay. Just to repeat my question, Mr. Kay, the
22 only records you were able to provide were customer files,
23 this response to WTB Exhibit Number 19, and the customer
24 print screens for these three customers which would
25 specifically show customers operating on this frequency from

1 this site.

2 A What I could hard prove on paper, you've got it.

3 Q So the answer to the question is --

4 A -- is yes. I may have missed a piece of paper
5 here and there, but I made a diligent search to give you
6 what I could.

7 Q Okay. Mr. Kay, please turn to WTB Exhibit 25.
8 Excuse me. Turn to Exhibit 26.

9 A Twenty-six?

10 Q Right. It's for Call Sign WIK-331.

11 A Yes.

12 Q Okay. Do you see under the second listing on the
13 first page there is a filed number file number of an
14 application and a grant date, 10/21/91?

15 A Yes.

16 Q And turning to the third page, the only site
17 listed under this authorization is Sierra Peak.

18 A Yes.

19 Q And do you see under "Frequency Key 1" again, this
20 is an FB-6 authorization. Correct?

21 A Yes.

22 Q And Frequency 507.6875 megahertz?

23 A Yes.

24 MR. KELLETT: I'm sorry. I'm lost. What page are
25 you on?

1 MR. SCHAUBLE: Page four of the exhibit.

2 MR. KELLETT: And this is Exhibit 25?

3 MR. SCHAUBLE: Twenty-six.

4 MR. KELLETT: Okay. That's why I'm confused.

5 Thank you.

6 THE WITNESS: What's your question?

7 BY MR. SCHAUBLE:

8 Q Do you see the authorization there for the number
9 of mobiles authorized to 71?

10 A Yes.

11 Q Okay. Now, in your response to WTB Exhibit Number
12 19, did you provide any information, loading information,
13 relating to WIK-331? Mr. Kay, I would direct your attention
14 to between pages 81, which is 507.6875 at Lukens, and page
15 82, which is Frequency 507.7125.

16 A Yes. This is page 81 and 82?

17 Q Between page 81 and 82.

18 A Okay.

19 Q Do you agree that page 81 is called is Call Sign
20 WEC-9 through 4?

21 A That sounds right.

22 Q And it's at 507.6875 at Lukens?

23 A Yes.

24 Q And WIH-339, the next page, is another frequency,
25 507.7125?

1 A Correct.

2 Q Are you aware of having provided any information
3 any information relating to 507.6875 megahertz at Sierra?

4 A We don't bill for it.

5 Q So the answer is you did not provide it for that
6 particular site location.

7 A There was nothing to provide.

8 Q Okay.

9 A The user of the frequencies is on page 81, and
10 it's called Bell Cab Company, running taxi cabs 200 mobiles,
11 which uses our Lukens site, which is being charged for and
12 being shown here, and because he is on that frequency, he
13 can also access our Sierra Peak, and we use it as a backup
14 for him. They use it, but it's not documented and not being
15 paid for. There you go. Two hundred cabs is an awful lot
16 of taxi cabs.

17 Q Now, Mr. Kay, prior to now, did you ever explain
18 to the Commission that Bell Cab was, in fact, operating on
19 that particular station?

20 MR. SHAINIS: Objection. Relevance. What
21 difference does it make when he explained it to the
22 Commission?

23 MR. KELLETT: The requirement, Your Honor, is that
24 he provide customer records, so I don't think it really
25 matters. You can't give him credit for anything he doesn't

1 provide substantiated with customer records, so I tend to
2 agree with Mr. Shainis's objection.

3 MR. SHAINIS: Thank you.

4 THE COURT: Well, then I'll sustain the objection.

5 MR. SCHAUBLE: Mr. Kay, please turn to WTB Exhibit
6 Number 27.

7 THE COURT: Just to be clear, there is nothing in
8 the Commission's rules which requires only paid customers to
9 be considered on the loading, does it?

10 MR. KELLETT: It's just that they have to
11 substantiate it by records. The Commission item cited in
12 our trial brief says that he has to substantiate it with
13 business records or we can't give him credit for it.

14 THE COURT: I understand, but there is nothing in
15 the rules which limits you on the loading if you have
16 nonpaying customers.

17 MR. KELLETT: Right. There is no limit that they
18 have to be paid.

19 THE COURT: All right.

20 MR. KELLETT: None whatsoever.

21 MR. SHAINIS: And also the rules don't exactly
22 describe the type of record you need to keep.

23 THE COURT: Well, we'll get to that at some point,
24 I guess.

25 MR. SCHAUBLE: Mr. Kay, please turn to WTB Exhibit

1 Number 27.

2 THE WITNESS: Okay.

3 BY MR. SCHAUBLE:

4 Q Do you see that's for Call Sign WIK-376?

5 A Yeah.

6 Q And do you see the section listing under there,
7 there is a grant date for an application, 12/5/91?

8 A Yeah.

9 Q And, again, is this a service ID which designates
10 business radio service?

11 A Yes, it is.

12 Q Turning to page three, the transmitter sites
13 listed are Sierra Peak, 620 Newport Center Drive, Newport
14 Beach; and San Sevaine Peak --

15 A San Sevaine.

16 Q San Sevaine in San Bernardino. Did you see that?

17 A Yes.

18 Q Okay. Turning to the next page, do you see under
19 "FB-6" a frequency listed as 507.6625 megahertz?

20 A Yes.

21 Q And the number of mobiles authorized under this
22 authorization is 87.

23 A Yes.

24 Q And the question, Mr. Kay, is did you provide any
25 information concerning loading for this station in WTB

1 Exhibit Number 19? And, again, the information I see
2 concerning 507.6625 megahertz is on pages 79 and 80.

3 MR. SHAINIS: Objection to the question. You
4 asked, did you provide any information on loading? The
5 question doesn't have any spate of time to it.

6 MR. SCHAUBLE: In Exhibit Number 19.

7 MR. SHAINIS: I'm sorry.

8 THE COURT: And you want to know about specific
9 items there or what?

10 MR. SCHAUBLE: Your Honor, I refer the witness to
11 pages 79 and 80 because those are the pages I see which
12 relate to the specific frequency in question.

13 THE COURT: What do you want to know about it?

14 BY MR. SCHAUBLE:

15 Q Okay. Isn't it a fact, Mr. Kay, that you provided
16 nothing listing any loading on either Call Sign WIK-376 or
17 from the frequency of 507.6625CRP?

18 A Correct.

19 Q Okay.

20 A I didn't. Take a look at pages 79 and 80. That's
21 the same frequency but under different call signs. That's
22 where I'm billing the customers that operate on the
23 frequency. You will find throughout here, and I'm sure
24 you've got a whole list of them here, that it was not
25 uncommon at all for me -- I charged the customer for one

1 site and gave them additional sites for free. And the
2 billing records show mainly the northern end, which is Mount
3 Lukens, which shows here on page 79 and also a mountain on
4 page 80. We gave the Sierra Peak away. That's throughout
5 these. You'll find lots of them. Never asked.

6 MR. SCHAUBLE: Your Honor, I note it's 4 o'clock
7 right now.

8 THE COURT: All right. We'll recess until 10:15,
9 Mr. Shainis.

10 MR. SHAINIS: Thank you, Your Honor.

11 MR. SCHAUBLE: Thank you, Your Honor.

12 THE COURT: All right.

13 (Whereupon, at 4 p.m., the hearing was adjourned,
14 to be reconvened at 10:15 a.m. on Tuesday, December 22,
15 1998.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: 94-147


CASE TITLE: James A. Kay,

HEARING DATE: December 21, 1998

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.


Date: _____


Sharon Bellamy
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I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.


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I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

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